

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 05-2112 (DSD/AJB)

Jose Lopez-Guido,

Petitioner,

v.

**ORDER**

United States of America,

Respondent.

This matter is before the court upon petitioner's objection to the report and recommendation of United States Magistrate Judge Arthur J. Boylan, dated September 14, 2005. In his report, the magistrate judge concluded that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 should be construed as a motion pursuant to § 2255 and transferred to the Northern District of Iowa.

The court reviews the reports and recommendations of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C). After a thorough review of the entire file and record, the court finds that the report and recommendation of the magistrate judge is well-reasoned and correctly construes petitioner's claims.<sup>1</sup> Further,

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<sup>1</sup> Petitioner objects only to the magistrate judge's alleged recommendation that his case be dismissed, arguing that the "Rules Governing Section 2254 Cases" do not support dismissal. However, the magistrate judge did not mention § 2254 or its applicable rules, nor did he recommend dismissal. Therefore, petitioner's objection is overruled.

the magistrate judge met the conditions under Morales v. United States for construing a habeas corpus petition as a § 2255 motion. See 304 F.3d 764, 767 (8th Cir. 2002). In particular, the magistrate judge warned petitioner of the restrictions on second or successive § 2255 motions, and of the one-year statute of limitations. See 28 U.S.C. § 2255. Because this court does not have jurisdiction over a § 2255 motion by petitioner, the magistrate judge properly recommended transferring his case to the sentencing court. Therefore, the court adopts the report and recommendation of the magistrate judge in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's application for habeas corpus relief under 28 U.S.C. § 2241 [Doc. No. 1] is construed as a motion to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255.

2. The Clerk of Court is directed to transfer this action to the Northern District of Iowa pursuant to 28 U.S.C. §§ 1406(a) and 1631.

Dated: December 23, 2005

s/David S. Doty  
David S. Doty, Judge  
United States District Court